

**TOWN OF CHINO VALLEY
STANDARD TERMS AND CONDITIONS
EFFECTIVE AS OF AUGUST 2, 2019**

1. GENERAL TERMS APPLICABLE TO ALL CONTRACTS. The following Standard Terms and Conditions (the “Terms and Conditions”) shall be applicable to any agreement, contract or other document for which the Terms and Conditions are specifically incorporated, including, but not limited to, Town of Chino Valley (“Town”) purchase orders, service contracts and any Town acceptance of vendor responses to requests for quotations (“Contracts”).

1.1 Acknowledgments and Acceptance.

- A. Clickwrap Terms Excluded. In the event the Vendor’s terms of sale or service were provided to the Town only upon “acceptance” of a “clickwrap” or “clickthrough” agreement, such terms of sale or service shall not be binding upon the Town.
- B. Generally. No oral agreement, “clickwrap” or “clickthrough” agreement or other understanding shall in any way modify a Town-issued or approved Contract or these Terms and Conditions. Vendor shall be deemed to agree to unqualified acceptance of these Terms and Conditions by (1) accepting a Contract, (2) delivering materials in accordance with a Contract, even if the Contract is unexecuted by the Vendor or (3) performing services called for in a Contract, even if the Contract is unexecuted by the Vendor. In the event of any inconsistency, conflict or ambiguity among any Town-issued Contract, these Terms and Conditions and the Vendor’s terms of sale or service, the documents shall govern in the order listed herein.

- 1.2 Indemnification. To the fullest extent permitted by law, Vendor further agrees to indemnify and hold harmless the Town and each council member, officer, employee or agent thereof (the Town and any such person being herein called an “Indemnified Party”), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys’ fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever (“Claims”), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the delivery of goods, the work or services of the Vendor, its officers, employees, agents, or any tier of subcontractor in the performance of a Contract, including, but not limited to claims or demands arising from (A) accidents occurring on the premises of the Town, whether or not caused by the negligence of the Vendor, its agents or employees, or the negligence other than the sole negligence of the Town, its agents or employees or that of any other person, firm or entity, (B) claims and

demands on account of infringement, or alleged infringement, of any patent, copyright, trademark, trade name, or any other intellectual property right in conjunction with the manufacture or use of any product included in a Contract and, upon written request, Vendor will defend at its own cost and expense any legal action or suit against the Town involving any such alleged infringement, and will pay and satisfy any and all judgments or decrees rendered in any such legal actions or suits and (C) damages to persons or property resulting from defects in materials or workmanship.

1.3 Termination; Cancellation. The Town may, by written notice to Vendor as set forth in this Section, terminate the Contract in whole or in part.

A. For Town's Convenience. All Contracts issued by the Town are for the convenience of the Town and, as such, may be terminated without cause after receipt by Vendor of written notice by the Town. Upon termination for convenience, Vendor shall be paid for all undisputed services performed to the termination date.

B. For Cause. If either party fails to perform any obligation under a Contract and such party fails to cure its nonperformance within 30 days after notice of nonperformance is given by the non-defaulting party, such party will be in default. In the event of such default, the non-defaulting party may terminate the Contract immediately for cause and will have all remedies that are available to it at law or in equity including, without limitation, the remedy of specific performance. If the nature of the defaulting party's nonperformance is such that it cannot reasonably be cured within 30 days, then the defaulting party will have such additional periods of time as may be reasonably necessary under the circumstances, provided the defaulting party immediately (1) provides written notice to the non-defaulting party and (2) commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event shall any such cure period exceed 120 days, unless specifically authorized, in writing, by the Town Manager or authorized designee. In the event of such termination for cause, payment shall be made by the Town to the Vendor for the undisputed portion of its fee due as of the termination date.

C. Due to Work Stoppage. The Contract may be terminated by the Town upon 30 days' written notice to Vendor in the event that the services are permanently abandoned. If Vendor abandons the services without the consent of the Town, Vendor shall be liable for all actual, incidental and consequential damages arising from or related to said abandonment, including, but not limited to: (1) the difference between the cost of a replacement vendor to complete the services and the Contract price for Vendor under the Contract; and (2) any additional charges, costs, fees or expenses for labor, materials or professional services incurred by the Town as a result of delays caused by abandonment of the services by

Vendor. The Town shall use its best efforts to replace Vendor within a reasonable time.

- D. Conflict of Interest. All Contracts are subject to the provisions of ARIZ. REV. STAT. § 38-511. The Town may cancel the Contract without penalty or further obligations by the Town or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating a Contract on behalf of the Town or any of its departments or agencies is, at any time while the Contract or any extension of the Contract is in effect, an employee of any other party to the Contract in any capacity or a consultant to any other party of the Contract with respect to the subject matter of the Contract.
- E. Gratuities. The Town may, by written notice to the Vendor, cancel a Contract if it is found by the Town that gratuities, in the form of economic opportunity, future employment, entertainment, gifts or otherwise, were offered or given by the Vendor or any agent or representative of the Vendor to any officer, agent or employee of the Town for the purpose of securing a Contract. In the event a Contract is canceled by the Town pursuant to this provision, the Town shall be entitled, in addition to any other rights and remedies, to recover and withhold from the Vendor an amount equal to 150% of the gratuity.
- F. Subject to Appropriation. The Town is obligated only to pay its obligations set forth in a Contract as may lawfully be made from funds appropriated and budgeted for that purpose during the Town's then-current fiscal year. The Town's obligations under a Contract are current expenses subject to the "budget law" and the unfettered legislative discretion of the Town concerning budgeted purposes and appropriation of funds. Should the Town elect not to appropriate and budget funds to pay its Contract obligations, the Contract shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose and the Town shall be relieved of any subsequent obligation under the Contract. The parties agree that the Town has no obligation or duty of good faith to budget or appropriate the payment of the Town's obligations set forth in the Contract in any budget in any fiscal year other than the fiscal year in which the Contract is executed and delivered. The Town shall be the sole judge and authority in determining the availability of funds for its obligations under the Contract. The Town shall keep Vendor informed as to the availability of funds for the Contract. The obligation of the Town to make any payment pursuant to the Contract is not a general obligation or indebtedness of the Town. Vendor hereby waives any and all rights to bring any claim against the Town from or relating in any way to the Town's termination of the Contract pursuant to this section.

G. Obligations Upon Receipt of Termination Notice. Upon receipt of a notice of termination as set forth above, Vendor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Town copies of all data, reports, calculations, drawings, specifications and estimates entirely or partially completed, together with all unused materials supplied by the Town, related to the services including any completed divisible part of the services which can be deemed to stand alone (the completed divisible parts of the services will be determined by both parties at the time of termination). Such termination shall not relieve Vendor of liability for errors and omissions. Any use of incomplete documents for the services or for any other project without the specific written authorization by Vendor will be without liability or legal exposure to Vendor. Vendor shall appraise the work it has completed and submit the appraisal to the Town for evaluation.

1.4 Suspension of Work.

A. Order to Suspend. The Town may, for its convenience, order the Vendor, in writing, to suspend all or any part of the services for such period of time as it may determine to be appropriate.

B. Adjustment to Contract Sum. If the performance of all or any part of the services is, for any unreasonable period of time, suspended or delayed by an act of the Town in the administration of the Contract, or by its failure to act within the time specified in the Contract (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in cost of performance of the Contract necessarily caused by such unreasonable suspension or modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension or delay (1) to the extent that performance was suspended or delayed for any other cause, including the fault or negligence of the Vendor, or (2) for which a change order is executed.

1.5 Independent Contractor. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Vendor acknowledges and agrees that the materials or services provided under a Contract are being provided as an independent contractor, not as an employee or agent of the Town. Vendor, its employees and subcontractors are not entitled to workers' compensation benefits from the Town. The Town does not have the authority to supervise or control the actual work of Vendor, its employees or subcontractors. The Vendor, and not the Town, shall determine the time of its performance of the services provided under a Contract so long as Vendor meets the requirements of its agreed Scope of Work as set forth in the Contract. Vendor is neither prohibited from entering into other contracts nor

prohibited from practicing its profession elsewhere. Town and Vendor do not intend to nor will they combine business operations under a Contract.

- 1.6 Applicable Law; Venue. All Contracts shall be governed by the laws of the State of Arizona, and a suit pertaining to any Contract may be brought only in courts in Yavapai County, Arizona.
- 1.7 Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Contract will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contract will promptly be physically amended to make such insertion or correction.
- 1.8 Severability. The provisions of a Contract are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of the Contract which may remain in effect without the invalid provision or application.
- 1.9 Assignment; Delegation. No right or interest in a Contract shall be assigned or delegated by Vendor without prior, written permission of the Town, signed by the Town Manager or authorized designee. Any attempted assignment or delegation by Vendor in violation of this provision shall be a breach of the Contract by Vendor.
- 1.10 Subcontracts. No subcontract shall be entered into by the Vendor with any other party to furnish any of the material or services specified herein without the prior, written approval of the Town. The Vendor is responsible for performance under the Contract whether or not subcontractors are used. Failure to pay subcontractors in a timely manner pursuant to any subcontract shall be a material breach of the Contract by Vendor.
- 1.11 Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of a Contract or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.
- 1.12 Confidentiality of Records. The Vendor shall establish and maintain procedures and controls that are acceptable to the Town for the purpose of ensuring that information contained in its records or obtained from the Town or from others in carrying out its obligations under a Contract shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Vendor's duties under the Contract. Persons requesting such information should be referred to the

Town. Vendor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Vendor as needed for the performance of duties under the Contract. Vendor shall ensure its subcontractors are aware of and comply with this provision.

1.13 Confidential and Proprietary Information.

- A. Confidential Information. Vendor acknowledges that, in the performance of some services (including installation of materials), Vendor will be acquiring, using and adding to confidential information. “Confidential Information” includes, but is not limited to, the following types of information or other information of a similar nature, whether or not reduced to writing: (1) any information protected by applicable law from disclosure by the Town; and (2) Town’s public infrastructure, public safety and proprietary materials to the extent not required to be disclosed pursuant to applicable law.
- B. Proprietary Rights. All Confidential Information and any proprietary rights therein, including copyrights, shall belong exclusively to the Town. Vendor agrees to turn over and deliver to the Town any such materials in Vendor’s possession or control at the end of the term of the Contract.
- C. Assignment; Works for Hire. Vendor agrees that the Town shall own all right, title and interest (including patent rights, copyrights, trade secret rights, mask work rights and other rights throughout the world) in any inventions, works of authorship, mask works, ideas or information made or conceived or reduced to practice, in whole or in part, by Vendor (either alone or with others) during its performance under a Contract (“Developments”); provided, however, that the Town shall not own Developments for which no equipment, supplies, facility, trade secret information or Confidential Information of the Town was used and which were developed entirely on Vendor’s time, and which do not relate to the scope of services under the Contract. Subject to the foregoing, Vendor shall promptly and fully disclose to the Town, or any persons designated by it, any and all Developments made or conceived or reduced to practice or learned by Vendor, either alone or jointly with others, while providing services under the Contract. Vendor hereby assigns all right, title and interest in and to any and all of these Developments to the Town. Vendor agrees to assist the Town, at the Town’s expense, to further evidence, record and perfect such assignments, and to perfect, obtain, maintain, enforce, and defend any rights specified to be so owned or assigned. Vendor hereby irrevocably designates and appoints the Town and its agents as attorneys-in-fact to act for and on Vendor’s behalf to execute and file any document and to do all other lawfully permitted acts to further the purposes of the foregoing with the same legal force and effect as if executed by Vendor. In addition, and not in contravention of any of the

foregoing, Vendor acknowledges that all original works of authorship which are made by Vendor (solely or jointly with others) within the scope of services and which are protectable by copyright are “works made for hire,” as that term is defined in the United States Copyright Act (17 U.S.C. § 101). To the extent allowed by law, this subsection 1.13(C) includes all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as “moral rights” (“Moral Rights”). To the extent Vendor retains any such Moral Rights under applicable law, Vendor hereby waives such Moral Rights and consents to any action consistent with the terms of the Contract with respect to such Moral Rights, in each case, to the full extent of such applicable law. Vendor shall confirm any such waivers and consents from time to time as requested by the Town.

D. Artwork Waiver. The Vendor agrees that any artwork produced in whole or in part as a result of a Contract, including, but not limited to any and all pictures, photographs, graphic designs, architectural drawings or models, literary works or musical compositions or recordings, are and shall remain the property of the Town and that the Vendor shall have no proprietary interest in said artwork.

1.14 Non-Exclusive Contract. A Contract is entered into with the understanding and agreement that it is for the sole convenience of the Town. The Town reserves the right to obtain like goods and services from another source when necessary.

1.15 Liens. All goods delivered and labor performed under a Contract shall be free from all liens and, if the Town requests, a formal release of all liens will be delivered to the Town Manager.

1.16 Entire Agreement; Interpretation; Parol Evidence. The Contract represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to the Contract are hereby revoked and superseded by the Contract. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of the Contract. The Contract shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Contract. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into the Contract.

1.17 Rights and Remedies. No provision in a Contract shall be construed, expressly or by implication, as waiver by the Town of any existing or future right and/or remedy available by law in the event of any claim of default or breach of the Contract. The failure of the Town to insist upon the strict performance of any

provision of these Terms or Conditions or to exercise or delay the exercise of any right or remedy provided in the Contract, or by law, or the Town's acceptance of and payment for services, shall not release the Vendor from any responsibilities or obligations imposed by the Contract or by law, and shall not be deemed a waiver of any right of the Town to insist upon the strict performance of the Contract.

1.18 Offset.

- A. Offset for Damages. In addition to all other remedies at law or equity, the Town may offset from any money due to the Vendor any amounts Vendor owes to the Town for damages resulting from breach or deficiencies in performance or breach of any obligation under a Contract.
- B. Offset for Delinquent Fees or Taxes. The Town may offset from any money due to the Vendor any amounts Vendor owes to the Town for delinquent fees, transaction privilege use taxes and property taxes, including any interest or penalties.

1.19 Vendor Licensing and Registration. Prior to award or acceptance of the Contract, the successful Vendor shall be registered with the Arizona Corporation Commission to do business in Arizona. The Vendor shall provide licensure information with the quotation. Corporations and limited liability companies shall be able to provide a Certificate of Good Standing from the Arizona Corporation Commission.

2. BILLING, SHIPPING, AND MATERIAL SPECIFICATIONS. The provisions of this Section 2 shall be applicable only to Contracts for purchase of commodities, materials and equipment or other goods delivered without additional services.

2.1 Price Warranty. Vendor shall notify and give the Town the benefit of any price reductions before actual time of shipment. However, if the Town authorizes shipment prior to specified shipment date, the Town shall have the advantage of any price reduction prior to the specified shipment date.

2.2 Quality Warranty. The standard manufacturer's warranty will apply to the goods purchased under a Contract. In addition, Vendor expressly warrants that all goods or services furnished under a Contract shall conform to the specifications, appropriate standards, and shall be new and free from defects in material or workmanship. Vendor warrants that all such goods or services shall conform to any statements made on the containers or labels or advertisements for such goods, or services and that any goods will be adequately contained, packaged, marked and labeled. Vendor warrants that all goods or services furnished hereunder will be merchantable, and will be safe and appropriate for the purpose which goods or services of that kind are normally used. If Vendor knows or has reason to know the particular purpose for which the Town intends to use the goods or services, Vendor warrants that goods or services furnished will conform in all respect to

samples. Inspection, testing, acceptance or use of the goods furnished hereunder shall not affect the Vendor's obligation under this warranty, and such warranties shall survive inspection, testing, acceptance and use. Vendor's warranty shall run to the Town, its successors, and assigns.

- 2.3 Billing/Payment. Vendor shall send, at the time of each shipment, unless otherwise specified, an original copy of each invoice showing the Town of Chino Valley purchase order (a "Purchase Order") number authorizing the transaction to the Town Accounts Payable address indicated on the face of the Purchase Order. If an invoice is subject to a cash discount, the discount period will be calculated from the date of receipt of the claim or the material, whichever is later. Payment terms are net 30 days unless subject to discounts specified by Vendor. For open Purchase Orders, only invoices as listed by the using department will be paid against the claim for Purchase Order. (Note: To ensure payment of any invoices applicable to the Purchase Order, Vendor should check with the using department prior to filing of claim.)
- 2.4 Packing. No extra charges shall be made for packaging or packing material unless authority is expressly incorporated into the Contract. Vendor shall be responsible for safe packing that conforms to the requirement of carrier's tariffs. All shipments must carry the correct quantity, including clear identification of individual components of a multi-part shipment (i.e. 1 of 4, 2 of 4, etc.), product identification, purchase order number, receiving address and product department plainly marked on all packages. Cars or trucks must be loaded to minimum weight requirements to ensure lowest rate unless otherwise specified or shipper will be charged with excess freight that the Town is required to pay.
- 2.5 Deliveries. Time is of the essence. Materials and equipment are for delivery not later than 30 days after receipt of a Contract unless otherwise stated. The Town reserves the right to cancel and reject the goods upon default by Vendor in time, rate or manner of delivery. The Town also reserves the right to refuse shipments made in advance of the receipt of the Purchase Order. Vendor shall make deliveries inside to the location designated by the Town.
- 2.6 Quantity. The quantity of goods ordered must not be exceeded or reduced without the Town Procurement Officer's permission, in writing, except in conformity with acknowledged industry tolerances. The Town reserves the right to adjust the quantities as necessary to meet its needs.
- 2.7 Inspection. All articles are subject to inspection and testing by the Town's representative at the place of manufacture, the destination, or at both places. When deemed necessary, samples of supplies or materials will be taken at random from stock received for submission to commercial laboratory for analysis and test as to whether the material conforms in all respects to the Contract. Materials failing to meet the Contract requirements will be held at Vendor's risk and may be

returned to Vendor; costs of transportation, unpacking, inspection, repacking, reshipping or other like expenses shall be the responsibility of the Vendor.

- 2.8 Specification Changes. The Town shall have the right, by a written change order, to make changes from time to time in the work to be performed or the materials to be furnished by Vendor. If such changes cause an increase or decrease in the amount due under the Contract, or in the time required for its performance, an acceptable adjustment shall be made and the Contract shall be modified, in writing, within 10 days from the date the change is ordered. Nothing in this clause shall relieve the Vendor from proceeding without delay in the performance of the Contract as changed.
- 2.9 Freight. Unless otherwise agreed to in writing, all delivery terms are FOB Destination and are to be prepaid. All other freight charges are to be prepaid and charged on the invoice. If a cash discount is not permitted on freight charges, then specific notation of this must be shown on the invoice. Vendor shall retain title and control of the goods until delivered and the Town has accepted delivery. All risk of transportation and all related charges shall be the responsibility of the Vendor. All claims for visible or concealed damage shall be filed by the Vendor. The Town will notify the Vendor promptly of any damages to the goods and shall assist the Vendor in arranging for inspection. Vendor must be notified of any damage within 30 days of delivery. The Town reserves the right to cancel and reject the goods upon default by Vendor in timeliness, rate, or manner of delivery.
- 2.10 Shipment Under Reservation Prohibited. Vendor is not authorized to ship goods under reservation, and no tender of a bill of lading will operate as a tender of the goods. The Town shall only be obligated to pay for goods actually received, unless prior payment has been specifically approved, in writing prior to shipment, by the Town Manager or authorized designee.
- 2.11 Sales/Use Tax, Other Taxes. Vendor is responsible for the payment of all federal, state, and local taxes related to or arising out of Vendor's services under the Contract, including by way of illustration, but not limitation, federal and state income tax, Social Security tax, unemployment insurance taxes, Arizona and/or municipal transaction privilege taxes and any business license fees as required. If any taxing authority should deem Vendor or Vendor's employees to be an employee of the Town, or should otherwise claim the Town is liable for the payment of taxes that are Vendor's responsibility under the Contract, Vendor will indemnify the Town for any tax liability, interest and penalties imposed upon the Town. The Town is exempt from Federal Excise Tax, including the Federal Transportation Tax.
- 2.12 Waiver. Waiver by the Town of a condition in any shipment shall not be considered a waiver of: (A) any other Contract provisions or these Terms and Conditions; or (B) that condition for subsequent shipments.

3. ADDITIONAL TERMS FOR SERVICES. The following provisions shall apply in all instances where a Contract requires personal or professional services from the Vendor.
- 3.1 Licenses. Vendor shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Vendor. The Town will not provide Vendor, its employees or subcontractors any business registrations or licenses required to perform the specific services set forth in a Contract.
- 3.2 Materials; Equipment. Vendor shall provide, pay for and insure under the requisite laws and regulations all labor, materials, equipment, tools, transportation and other facilities and services necessary for the proper execution and completion of the specific services set forth in the Contract.
- 3.3 Performance Warranty. Vendor warrants that the services rendered will conform to the requirements of its Contract and with the care and skill ordinarily used by members of the same profession practicing under similar circumstances at the same time and in the same locality.
- 3.4 Insurance.
- A. Insurer Qualifications. Without limiting any obligations or liabilities of Vendor, Vendor shall purchase and maintain, at its own expense, the minimum insurance set forth in this Subsection 3.3 with insurance companies authorized to do business in the State of Arizona pursuant to ARIZ. REV. STAT. § 20-206, as amended, with an AM Best, Inc. rating of A or above, and with policies and forms satisfactory to the Town. Failure to maintain insurance as specified herein may result in termination of a Contract at the Town's option.
- B. No Representation of Coverage Adequacy. By requiring insurance herein, the Town does not represent that coverage and limits will be adequate to protect Vendor. The Town reserves the right to review any and all of the insurance policies and/or endorsements cited in a Contract, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in a Contract or failure to identify any insurance deficiency shall not relieve Vendor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of the Contract.
- C. Additional Insured. All insurance coverage, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of a Contract, the Town, its agents, representatives, officers, directors, officials and employees as Additional Named Insured.

- D. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of a Contract are satisfactorily performed, completed and formally accepted by the Town.
- E. Primary Insurance. Vendor's insurance shall be primary insurance with respect to performance of a Contract and in the protection of the Town as an Additional Insured.
- F. Claims Made. In the event any insurance policies required by a Contract are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or by purchasing an extended reporting option, for three years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance and necessary endorsements citing applicable coverage is in force and contains the provisions as required herein for the three-year period.
- G. Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the Town, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Vendor. Vendor shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.
- H. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the Town. Vendor shall be solely responsible for any such deductible or self-insured retention amount.
- I. Use of Subcontractors. If any work under a Contract is subcontracted in any way, Vendor shall execute written agreement with its subcontractors containing the indemnification provisions set forth above and insurance requirements set forth herein protecting the Town and Vendor. Vendor shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.
- J. Evidence of Insurance. Prior to commencing any work or services under a Contract, Vendor will provide the Town with suitable evidence of insurance in the form of certificates of insurance and, if requested by the Town, a copy of the declaration page(s) of the insurance policies as required by these requirements, issued by Vendor's insurance insurer(s) as

evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in these requirements and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by these requirements. The Town shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way these insurance requirements or obligations. If any of the policies required by these requirements expire during the life of the Contract, it shall be Vendor's responsibility to forward renewal certificates and declaration page(s) to the Town 30 days prior to the expiration date. All certificates of insurance and declarations shall be identified by referencing the Contract; certificates of insurance and declaration page(s) of the insurance policies submitted without referencing the Contract, as applicable, will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions: (1) the Town, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows: (a) Commercial General Liability – Under Insurance Services Office, Inc., (“ISO”) Form CG 20 10 04 13 or equivalent, (b) Auto Liability – Under ISO Form CA 20 48 or equivalent, (c) Excess Liability – Follow Form to underlying insurance; and (2) Vendor's insurance shall be primary insurance with respect to performance of the Contract; and (3) a clear statement that all policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against Town, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Vendor under the Contract. ACORD certificate of insurance form 25 (2014/01) is preferred. If ACORD certificate of insurance form 25 (2001/08) is used, the phrases in the cancellation provision “endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives” shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

- K. Endorsements. Vendor shall provide the Town with the necessary endorsements to ensure Town is provided the insurance coverage set forth in this Subsection.

- L. Commercial General Liability. Vendor shall maintain “occurrence” form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises,

operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of a Contract, the Town, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 04 13, or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you." If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

- M. Vehicle Liability. Vendor shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Vendor's owned, hired and non-owned vehicles assigned to or used in the performance of the Vendor's work or services under a Contract. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of the Contract, the Town, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.
- N. Professional Liability. If a Contract is the subject of any professional services or work, or if the Vendor engages in any professional services or work in any way related to performing the work under a Contract, the Vendor shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the services performed by the Vendor, or anyone employed by the Vendor, or anyone for whose negligent acts, mistakes, errors and omissions the Vendor is legally liable, with an unimpaired liability insurance limit of \$2,000,000 each claim and \$2,000,000 annual aggregate.
- O. Workers' Compensation Insurance. If Vendor employs anyone who is required by law to be covered by workers' compensation insurance, Vendor shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Vendor's employees engaged in the performance of work or services under a Contract and shall also maintain Employers' Liability Insurance of

not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

P. Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed without 30 days' prior written notice to the Town.

3.5 Laws and Regulations. Vendor shall keep fully informed and shall at all times during the performance of its duties under a Contract ensure that it and any person for whom the Vendor is responsible abides by, and remains in compliance with, all rules, regulations, ordinances, statutes or laws affecting the services, including, but not limited to, the following: (A) existing and future Town and County ordinances and regulations, (B) existing and future State and Federal laws and (C) existing and future Occupational Safety and Health Administration standards.

3.6 Records and Audit Rights. To ensure that the Vendor and its subcontractors are complying with the warranty under subsection 3.6 below, Vendor's and its subcontractors' books, records, correspondence, accounting procedures and practices, and other supporting evidence relating to a Contract, including the papers of any Vendor and its subcontractors' employees who perform any work or services pursuant to a Contract (all of the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the Town, to the extent necessary to adequately permit (A) evaluation and verification of any invoices, payments or claims based on Vendor's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under the Contract and (B) evaluation of the Vendor's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in subsection 3.6 below. To the extent necessary for the Town to audit Records as set forth in this subsection, Vendor and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the Town shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of the Contract for the duration of the work and until three years after the date of final payment by the Town to Vendor pursuant to the Contract. Vendor and its subcontractors shall provide the Town with adequate and appropriate workspace so that the Town can conduct audits in compliance with the provisions of this subsection. The Town shall give Vendor or its subcontractors reasonable advance notice of intended audits. Vendor shall require its subcontractors to comply with the provisions of this subsection by insertion of the requirements hereof in any subcontract pursuant to the Contract.

3.7 E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, Vendor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Vendor's or

its subcontractor's failure to comply with such warranty shall be deemed a material breach of the Contract and may result in the termination of the Contract by the Town.

3.8 Israel. To the extent Ariz. Rev. Stat. § 35-393 through § 35-393.03 is applicable, the parties hereby certify that they are not currently engaged in, and agree for the duration of the Contract to not engage in, a boycott of goods or services from Israel, as that term is defined in § 35-393, Arizona Revised Statutes.

3.9 Notices and Requests. Any notice or other communication required or permitted to be given under a Contract shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the Town: Town of Chino Valley
202 North State Route 89
Chino Valley, Arizona 86323
Attn: Town Manager

With copy to: GUST ROSENFELD P.L.C.
One East Washington Street, Suite 1600
Phoenix, Arizona 85004-2553
Attn: Andrew J. McGuire

If to Vendor: _____

Attn: _____

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this section. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

3.10 Time is of the Essence. The timely completion of the services is of critical importance to the economic circumstances of the Town.

3.11 Meaning of Terms. References made in the singular shall include the plural and the masculine shall include the feminine or the neuter.

4. ADDITIONAL TERMS FOR INFORMATION TECHNOLOGY. The following provisions shall apply to all Contracts relating to the Town's information technology infrastructure.

4.1 Limited Access. If necessary for the fulfillment of a Contract, the Town may provide Vendor with non-exclusive, limited access to the Town's information technology infrastructure. Vendor understands and agrees to abide by all Town policies, standards, regulations and restrictions regarding access and usage of Town's information and communication technology resources. Vendor shall enforce all such policies, standards, regulations and restrictions with all Vendor's employees, agents or any tier of subcontractor granted access in the performance of the Contract, and shall be granted and authorized only such access as may be necessary for the purpose of fulfilling the requirements of the Contract. Vendor's employees, agents and subcontractors must receive prior, written approval from Town before being granted access to the Town's information and communication technology resources and data. The Town, in its sole discretion, shall determine accessibility and limitations thereto. Vendor agrees that the requirements of this Section shall be incorporated into all subcontractor/subconsultant agreements entered into by the Vendor. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. Notwithstanding the provisions in Section 1.3(B), a violation of this Section may result in immediate termination of the Contract without notice.

4.2 Data Confidentiality. All Town data and technical information, regardless of form, including originals, images and reproductions, prepared by, obtained by or transmitted to Vendor in connection with a Contract, are confidential, proprietary information owned by the Town. Except as specifically provided in the Contract, the Vendor shall not, without the prior, written consent of the Town Manager or authorized designee, (A) disclose data generated in the performance of the services to any third party or (B) use Town data and information.

4.3 Data Security. Personal identifying information, financial account information, or restricted Town information, whether in electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. At a minimum, Vendor must encrypt and/or password-protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices. When Town information, regardless of its format, is no longer required by the Vendor to execute the work contracted by the Town, the information must be redacted or destroyed through appropriate and secure methods to ensure the information cannot be viewed, accessed or reconstructed.

- 4.4 Compromised Security. In the event that data collected or obtained by the Vendor in connection with a Contract is believed to have been compromised, Vendor shall immediately notify the Town Manager, or authorized Town designee. Vendor agrees to reimburse the Town for any costs incurred by the Town to investigate potential breaches of this data by the Vendor and, where applicable, the cost of notifying and/or assisting individuals who may be impacted by the breach.
- 4.5 Cessation of Operation or Support. If Vendor ceases to operate, ends support of, or otherwise divests its interest in the software and materials for which it is contracted by the Town and does not assign its service obligations according to Section 1.9 above, the Vendor shall provide the Town a copy of current source code. The Town agrees it shall only use the source code to support its internal use of the software.
- 4.6 Disengagement. In the event the Contract is terminated by either party, Vendor agrees to confer back to the Town all of its data, in usable and normalized format, within 30 days of notice of termination. There shall be no charge for the return of Town data to the Town.
- 4.7 Survival. The obligations of Vendor under this Section 4 shall survive the termination of the Contract.